NO. 48840-0

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

JEAN MARIE MANUSSIER, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable G. Helen Whitener

No. 14-1-05274-1

BRIEF OF RESPONDENT

MARK LINDQUIST
Prosecuting Attorney

By
MICHELLE HYER
Deputy Prosecuting Attorney
WSB # 32724

930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
PH: (253) 798-7400

Table of Contents

Table of Authorities

State Cases

Federal and Other Jurisdictions

Statutes

Rules and Regulations

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. When the evidence presented firmly supports the conclusion that the defendant intended to commit a crime with a stolen check made out to an individual for $23,500, should the court reject defendant's claim that there was insufficient evidence supporting conviction for Identity Theft in the First Degree? (Appellant's Assignment of Error 1).

2. When the evidence presented firmly supports the conclusion that the defendant intended to commit a crime with financial mail stolen from 25 individuals, should the court reject defendant's claim that there was insufficient evidence supporting conviction for Identity Theft in the Second degree? (Appellant's Assignment of Error 1).

3. Should the Court award appellate costs if a cost bill is filed? (Appellant's Assignment of Error 2).

B. STATEMENT OF THE CASE.

1. Procedure

On July 22, 2015, the Pierce County Prosecutor's Office filed a third amended information charging Jean Manussier ("defendant") with

Count I (Identity Theft in the First Degree), Counts II through XI (Identity Theft in the Second Degree), Count XII (Possession of Stolen Mail), and Count XIV (Bail Jumping). CP 36-41. The Honorable Judge Helen Whitener presided over the trial. RP 1.

The jury returned guilty verdicts of Counts I through XI. CP 62-75; 136-137. Defendant was sentenced to 36.75 months. CP 141. The court imposed mandatory legal financial obligations (LFOs) of $800. CP 138-139. Defendant filed timely appeal. CP 162.

2. Facts

On December 30, 2014, at approximately 3:16 a.m., Pierce County police officers initiated a traffic stop on a moving vehicle with expired tabs in Spanaway. 2RP 31; 3RP 26. The defendant was operating the vehicle and a man who identified himself as "Andrew Gasaway" was riding in the passenger seat. 2RP 32; 3RP 26. When asked, defendant indicated her vehicle registration had been stolen and that she did not have automobile insurance. 2RP 41. She also did not have a driver's license. 3RP 37.

Although it was dark outside, Officer Helligso and Officer Olson were able to see into the vehicle with the police car spotlight and handheld flashlights. 2RP 43; 3RP 27. From where Officer Helligso stood at the driver's side window, he saw a significant amount of garbage and unopened financial mail in the backseat of the vehicle. 2RP 42. The front

seat passenger was observed handing mail to the defendant. 6RP 19. Officer Olson was able to see that one of the envelopes was addressed to "Tara Stover." 3RP 27-28. He also discerned that another envelope was addressed to "Raymond D. Eaton." 3RP 29; Ex. 2. Officer Helligso questioned defendant about the mail in the backseat, and defendant indicated it belonged to her and she had put it there. 2RP 43. Officer Helligso could see that none of the mail was addressed to defendant or had her name on it, nor did it have the name Andrew Gasaway on it. 2RP 43-44. He asked defendant why she had mail that did not belong to her inside of the vehicle. 2RP 45; 2RP 48. Defendant then responded that she did not know how it got there and that someone else had put it there, but she did not know who. *Id.*

The officers had defendant and the passenger exit the vehicle and asked defendant and "Andrew" for consent to search the vehicle to obtain the mail that was inside. 2RP 51; 3RP 36. Defendant consented, however, "Andrew" stated he could not give consent because it was not his vehicle. 3RP 36. Officer Olson informed defendant that she had been stopped because her registration was expired; he also reiterated that she did not have a driver's license on her, she did not have proof of insurance, did not have vehicle registration, and had mail in the car that did not belong to her. 3RP 37. Defendant responded that she wanted to go home and inquired if she could "just put the mail back in a mail box and let it get sent back to the rightful owner." *Id.* Officer Helligso indicated that was

not an option. *Id.* Because the officers could not contact a true victim at that time, Officer Olson informed defendant and "Andrew" that they were free to go. 3RP 38. The vehicle was taken to the Pierce County Sheriff's secure impound lot at the South Hill precinct, where it was placed in a secure garage and secured with tamper-proof red evidence tape. 2RP 52; 3RP 39-40; 5RP 120-121.

A search warrant was ultimately executed on the defendant's vehicle. 3RP 30. After additional investigation, Officer Olson was able to identify the passenger, "Andrew Gasaway," as Nicolas Tilmon. 3RP 28; 3RP 41. Officer Olson was able to obtain information from the Department of Licensing fraud unit which revealed that Andrew Gasaway did not match the description of the passenger claiming to be Andrew Gasaway. 3RP 41. Officer Olson contacted the real Andrew Gasaway, who indicated he had previously been the victim of fraud. *Id.*

Officer Olson reconnected with defendant and Tilmon, arrested them, and transported them to the Pierce County Jail. 3RP 42.

After taking defendant and Tilmon into custody, the Pierce County Sheriff's Office attempted to contact the 25 individuals to whom the mail located in defendant's vehicle was addressed, and none of those individuals knew defendant or had given her permission to access their mail or personal information. The Pierce County Sheriff's Department contacted the following people and notified them that their financial mail that was found in defendant's vehicle:

1. David Mellor—Payment voucher and personal check written to IRS. 2RP 80-81; Ex. 14.
2. Steven Reinwald—Letter from bank regarding issuance of new credit card; there had been speculation Mr. Reinwald's previous credit card had been compromised. 2RP 90-92; Ex. 24.
3. Tara Stover—Billing statement and personal check; personal check payments to Cabela's, Comcast, Pierce County Refuse, Puget Sound Energy, and Verizon Wireless. 2RP 100-107; Ex. 3; Ex. 30.
4. Danielle Stevens—Credit union bank statement. 3RP 107; Ex. 26.
5. Robert Swartz—Check for $23,500 made out to Mr. Swartz by Bradley Heinz, the executor of a trust account. 3RP 111-112; Ex. 25.
6. Timothy Dempsy—Document from Chase bank regarding his credit card and checking account. 3RP 141-142; Ex. 15.
7. Malala Laie—Bank statement, Spanaway water bill, and property management services letter related to time-share. 3RP 154-155; Ex.13.
8. Raymond Eaton—IRS bill. 4RP 10; Ex. 2.
9. Lisa Nieblas—Application for American Express Green Card. 4RP 19; Ex. 8.
10. William Birmingham—Documents related to family medical deductibles and health insurance. 4RP 32; Ex. 22.
11. Joseph Powers—CreditOne credit card statement. 4RP 45; Ex. 24.
12. Gerald Kulp—American Express preapproval letter and Premera Blue Cross medical insurance document. 4RP 60; Ex. 10; 4RP 61; Ex. 29.
13. Nicole Garcia—Student loan document. 4RP 108; Ex. 27.
14. John Derieg—Statement of benefits and refund check from Carpenter's Health and Security Trust. 4RP 167; Ex. 6.
15. Ashley Hodges—Energy bill and insurance benefits statement. 4RP 175; Ex. 20.
16. John Hodges—Letter from Kittitas County Clerk's Office.
17. David Charboneau—Documents from US Bank and First Financial Bank; First Financial Bank Cash Advance Check for $1,000. 5RP 14; Ex. 5; 5RP 15-18; Ex. 11; Ex. 35.

18. Gail Charboneau—CitiFinancial mortgage statement regarding income taxes, Navient student loan bill, and Wells Fargo car loan statement. 5RP 30; 5RP 32; 5RP 33; Ex. 16.
19. Enola Christian—Aflac benefits statement. 5RP 44; Ex. 7.
20. Jill Cantone—Chase Saphire preapproval letter. 5RP 53; Ex. 9.
21. Matthew Cantone—American Express preapproval letter and Chase credit card application. 5RP 55-56; Ex. 10; Ex. 23;
22. Jamie Clelland—MasterCard application. 5RP 80-81; Ex. 32.
23. Hejra Taylor—Washington Quest card. 5RP 82; Ex. 33.
24. Tyler Jones—MasterCard debit card. 3RP 88; Ex. 17.
25. David Jones—MasterCard debit card. 3RP 88; Ex. 18.

C. ARGUMENT.

1. THE JURY'S CONCLUSION THAT THE DEFENDANT COMMITTED THE CRIMES DESCRIBED IN COUNTS I THROUGH XI IS SUPPORTED BY THE EVIDENCE.

In a criminal case, a defendant may challenge the sufficiency of the evidence before trial, at the end of the State's case in chief, at the end of all of the evidence, after the verdict, and on appeal. ***State v. Lopez***, 107 Wn. App. 270, 276, 27 P.3d 237 (2001). "In a claim of insufficient evidence, a reviewing court examines whether 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt,' 'viewing the evidence in the light most favorable to the State.'" ***State v. Brockob***, 159 Wn.2d 311, 336, P.3d 59 (2006) (quoting ***State v. Green***, 94 Wn.2d 216, 221, 616 P.2d 628 (1980)). Thus, sufficient evidence supports a conviction when, viewing it in the light most favorable to the State, a rational fact finder could find the essential

elements of the crime beyond a reasonable doubt. ***State v. Cannon***, 120 Wn. App. 86, 90, 84 P.3d 283 (2004).

"A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *Id.* (quoting ***State v. Myers***, 133 Wn.2d 26, 37, 941 P.2d 1102 (1997)). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. ***State v. Salinas***, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Finally, determinations of credibility are for the fact finder and are not reviewable on appeal. ***Brockob***, 159 Wn.2d at 336; ***State v. Locke***, 175 Wn. App. 779, 788-89, 307 P.3d 771, 776 (2013). In determining the sufficiency of the evidence, circumstantial evidence is not to be considered any less reliable than direct evidence. ***State v. Delmarter***, 94 Wn.2d 634, 638, 618 P.2d 99, 101 (1980). In addition, a jury can infer the specific criminal intent of a criminal defendant where it is a matter of logical probability. *Id.*

a. Defendant was convicted of Identity Theft in the Second Degree based on sufficient information.

Defendant was convicted of Identity Theft in the First Degree. CP 36. The jury was presented with the elements of the crime as follows, consistent with the Washington Pattern Jury Instructions (WPIC):

1) That on or about the 30th day of December, 2014, the defendant knowingly possessed a means of identification or financial information of another

person, Bradley Heinz TTEE and/or Marjorie Swartz Insurance Trust;
2) That the defendant did so with the intent to commit or to aid or abet any crime;
3) That the defendant obtained credit, money, goods, services, or anything else in excess of $1500 in value from the acts described in element (1); and
4) That any of these acts occurred in the State of Washington.

CP 96.

Defendant's claim is limited to the "intent" element above, alleging the State did not present sufficient evidence for a reasonable jury to conclude that defendant intended to use the financial information contained in the mail belonging to third parties to obtain credit, money, goods, services, or anything else of $1500 in value. Appellant's Brief, 1. The jury was presented with the jury instruction regarding intent as follows:

> A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result that constitutes a crime.

CP 92.

The jury was also instructed about circumstantial evidence as follows:

> The evidence that has been presented to you may be either direct or circumstantial. The term "direct evidence" refers to evidence that is given by a witness who has directly perceived something at issue in this case. The term "circumstantial evidence" refers to evidence from which, based on your common sense and experience, you may reasonably infer something that is at issue in this case. The

> law does not distinguish between direct and circumstantial evidence in terms of their weight or value in finding the facts in this case. One is not necessarily more or less valuable than the other.

CP 81.

All elements of Identity Theft in the First Degree have been satisfied and are proven by defendant's actions and circumstantial evidence. The "knowingly" requirement is satisfied by defendant's admission that she possessed the mail. 2RP 43. A check written out to Robert Zane for $23,500 was found in the vehicle, which satisfies the requirement that the value requirement. 3RP 73-75; Ex. 25.

Intent to commit a crime can be inferred by the defendant's conduct and attendant circumstances. ***State v. Woods***, 63 Wn. App. 588, 591, 821, P.2d (1991). Possession together with "slight corroborating evidence" can be sufficient to infer intent. ***State v. Esquivel***, 71 Wn. App. 868, 870, 863 P.2d (1993).

In addition to possession, there is undeniably even more than "slight corroborating evidence" to infer defendant's intent to injure. It was reasonable for the jury to infer that defendant intended to commit a crime with the stolen mail of 25 individuals. Defendant demonstrated her intent to use the information in the mail based on her initial statement that the mail belonged to her and the fact that she later changed her story and

claimed she did not have knowledge of how the mail got in her vehicle. 2RP 43; 2RP 45. The fact that defendant lied indicates guilt.

Defense counsel asserts that defendant did not know the mail was in the vehicle until police inquired about it. Brief of Appellant, 4. Defense counsel's assertion is incorrect; defendant immediately responded that the mail belonged to her when questioned by Officer Helligso. *Id.* The amount of mail located in the vehicle was substantial enough that both Officer Helligso and Officer Olson immediately noticed it after approaching the vehicle and speaking with defendant. 2RP 43. Because there was such a copious amount of mail that it immediately caught the attention of both officers looking into the vehicle from the outside, it is undeniable that defendant was obviously aware of its presence. Further, as the officers approached the vehicle to question defendant, they witnessed the passenger, Nicolas Tilmon, attempting to hand some mail to defendant. 2CP 69. This is further evidence that defendant was aware she possessed the mail.

Defendant's intent is also proven by her outwardly visible remorse after Officer Olson explained he could not allow her to drive the vehicle away with mail that did not belong to her. 3RP 36. After consenting to the officers searching the vehicle, defendant put her head down and began crying. 3RP 37. She stated she wanted to go home and had not done

anything wrong. *Id.* She also inquired if she could put the mail back in a mailbox so it could be sent back to the rightful owner. 3RP 38. If defendant truly had no ties to the mail, she would have felt no obligation to return it to the owners. This is further circumstantial evidence proving defendant's guilt that she was aware she possessed the mail and that she intended to use it to commit a crime.

Defense counsel inappropriately cites to the holding in ***State v. Vasquez***, 178 Wn.2d 1, 4, 309 P.3d 318 (2013), as being applicable to the present case for several reasons. In ***Vasquez***, the court found that a defendant could not be found guilty of fraud beyond a reasonable doubt where a security guard found fake social security and permanent resident cards in the defendant's wallet during a search related to a shoplifting incident. *Id.* at 4, 17. The defendant's conviction was reversed based on the reasoning that equivocal evidence cannot form the basis of an inference of intent to injure or defraud. *Id.* at 17. In the present case, the evidence is not equivocal because there is not more than one potential reasonable explanation for the presence of financial mail belonging to 25 different individuals found in defendant's vehicle,

The ***Vasquez*** court also reasoned that it was unclear whether the defendant intended to convince the security guard that the social security and permanent resident cards were genuine or whether the defendant was

merely acknowledging his ownership of the cards. ***Vasquez*** at 14. Additionally, there was concern that a language barrier existed as the defendant had given several confused responses to the security guard's questions. *Id.* at 15. In the present case, there is no ambiguity relating to the fact that defendant initially tried to dishonestly convince the officers that the mail did not belong to her. Defendant was not confused when questioned by the officers; she simply later changed her story without any reservation.

The ***Vasquez*** court cites to ***State v. Brockob***, 159 Wn.2d 311, 318, 330-31, 150 P.3d 59 (2006), in which the court found that the defendant lacked the requisite intent to manufacture methamphetamine when the defendant was caught shoplifting cold tablets containing pseudoephedrine. ***Vasquez*** at 8-9, *citing* ***State v. Brockob***, 159 Wn.2d 311, 318, 330-31, 150 P.3d 59 (2006). The court held that the State merely proved an intent to shoplift pseudoephedrine and that the "mere assertion that pseudoephedrine is *known to be used* to manufacture methamphetamine does not necessarily lead to the logical inference that the defendant intended to do so, without more. *Id.* The court also noted that mere possession of a controlled substance, including quantities greater than needed for personal use, is not sufficient to support an inference of intent to deliver; rather, at least one additional fact must exist, such as a large

amount of cash or sale paraphernalia, suggesting an intent to deliver. *Id.* at 9. Further, the court required that evidence of an intent to deliver must be sufficiently compelling that the specific criminal intent of the accused may be inferred from the conduct where it is plainly indicated ***as a matter of logical probability*** (emphasis added). *Id., quoting* ***State v. Kovac***, 50 Wn. App. 117, 120, 747, P.2d 484 (1987).

Brockrob is distinguishable from the present case because the primary and most common purpose of cold tablets is to relieve cold symptoms—not manufacture methamphetamine. It is entirely possible that the defendant intended to use the tablets for that purpose; therefore, a reasonable jury could not find the defendant guilty of intent to manufacture methamphetamine beyond a reasonable doubt. Here, it is not common for an individual to possess not only the mail, but, specifically, *only the financial mail* of 25 other individuals without some further purpose than simply possessing it. Additionally, as the ***Vasquez*** court stated as a requirement, several additional facts exist which suggest an intent to carry out a crime. Those facts include defendant's dishonesty about ownership of the mail, the number of individuals to whom the mail belonged, the quantity of the mail, and the defendant's sudden interest in returning the mail to its rightful owners upon being caught by the officers. Moreover, Tillmon has handing mail to the defendant during the time that

the officers made contact. 6RP 19. Based on those facts, defendant's intent may be inferred from her conduct as a matter of logical probably in congruence with the rule in ***Kovac***.

The ***Vasquez*** court also cites to ***People v. Bailey***, 13 N.Y.3d 67, 69, 915 N.E.2d 611, 886 N.Y.S.2d 666 (2009), in which a defendant was arrested for attempting to pickpocket several individuals and subsequently charged with criminal possession of a forged instrument when officers found three counterfeit $10 bills in the defendant's pocket during a search. That case is distinguishable from defendant's case because it could not be proven beyond a reasonable doubt that the ***Bailey*** defendant knew the $10 bills were counterfeit; the intent element cannot be proven until the knowingly possessed element has been satisfied. In the present case, defendant knew the mail did not belong to her and she stated such to the officers and at trial. 2RP 45, 48; 7RP 14-16.

b. Defendant was convicted of Identity Theft in the Second Degree based on sufficient information.

Defendant was convicted of ten counts of Identity Theft in the Second Degree. CP 54-73.

The State presented sufficient evidence for a reasonable jury to conclude that defendant intended to use the financial information

contained in the mail belonging to third parties to obtain credit, money, goods, services, or anything else in an amount less than $1,500 in value.

The jury was instructed as follows:

> 1) That on or about the 30th day of December, 2014, the defendant knowingly possessed a means of identification or financial information of another person, Bradley Heinz TTEE and/or Marjorie Swartz Insurance Trust;
> 2) That the defendant acted with the intent to commit or aid or abet any crime;
> 3) That the defendant obtained credit, money, goods, services, or anything else that is $1500 or less in value from the acts described in element (1) or did not obtain any credit, money, goods, services, or other items of value; and
> 4) That any of these acts occurred in the State of Washington.

CP 99-109.

Defendant's claim is limited to the "intent" element above, alleging the State did not present sufficient evidence for a reasonable jury to conclude that defendant intended to use the financial information contained in the mail belonging to third parties to obtain credit, money, goods, services, or anything else that is $1,500 or less in value, or did not obtain any credit, money, goods services, or other items of value.

Defendant's intent is proven as indicated above. Further, it is undisputed that defendant knowingly possessed mail containing financial documents and personal information of 20 individuals not exceeding $1,500.

Actual use of another person's identification or financial information is not required for a defendant to be guilty of Identity Theft. In ***State v. Fisher***, the court held that the plain words of the statute include ***possession*** of either a means of identification or financial information of another person, with the requisite intent, as one of several punishable acts. ***State v. Fisher***, 139 Wn. App. 578, 584, 161 P.3d 2054 (2007). In that case, the defendant possessed the financial information of several different victims. *Id.*

In ***State v. Sells***, the court found the defendant guilty of Identity Theft in the Second Degree where the defendant stole three credit cards from a school district office and made purchases using one of them. ***State v. Sells***, 166 Wn. App. 918, 921, 271 P.3d 952 (2012). Second degree identity theft involves credit, money, goods, services, or anything else of value less than $1,500. *Id.* at 924. A "[m]eans of identification" for purposes of the identity theft statute means information or an item that is not describing finances or credit, but is personal to or identifiable with an individual or other person, including a person's name. *Id.* The phrase "another person" as used in the identity theft statute requires proof that the identification or financial information belongs to a real person. *Id.* (quoting: ***State v. Berry***, 129 Wn. App. 59, 67, 117 P.3d 1162 (2005)). Actual use of the means of identification is not required in order to

convict. *Id.* Despite the fact that the defendant did not use two of the three stolen cards, the defendant was still found guilty of Identity Theft in the Second Degree for possessing the cards. CP 62-75.

In the present case, defense counsel's argument that defendant did not satisfy the "intent" requirement of the statute because she did not use or compromise any of the information in the mail is without merit. The fact that the victims' accounts were not actually compromised at the time defendant was taken into custody is irrelevant. Defendant's possession of the stolen mail is satisfies the requirements of the statute; the circumstances of the possession allows for the inference of her intent to cash or deposit the checks or to use the personal information contained in the mail. All of the mail contains financial documents, suggesting that the mail had been sorted. CP 55-61. This is evident of intention to obtain the personal information of others to defraud.

Additionally, defendant's claim that she was unaware of the mail is blatantly dishonest. Exhibit 43 (a photograph of the inside of defendant's vehicle) reveals that numerous articles of stolen mail were scattered on the floorboards of both the driver's and passenger sides of the vehicle. Given that defendant was driving the vehicle, there is no way she could not have noticed that she was stepping on a hoard of mail. Further, pictures of the vehicle show that the mail was dispersed throughout the entire vehicle and

was on both the seats and floorboards in the front and back seats. Ex. 30. Tillmon testified that the mail had been in a trash bag left on defendant's driveway and that he had placed the trash bag in the vehicle; however, there is no evidence of a trash bag and the mail is not positioned as if it had slipped out of a bag. Moreover, Tillmon was observed physically handing mail to the defendant at the time of the stop. 6RP 19.

2. THE STATE HAS NOT YET REQUESTED AN AWARD OF APPELLATE COSTS AND THIS COURT HAS THE DISCRETION TO AWARD THEM IF A COST BILL IS FILED.

Under RCW 10.73.160, an appellate court may provide for the recoupment of appellate costs from a convicted defendant. ***State v. Blank***, 131 Wn.2d 230, 234, 930 P.2d 1213 (1997). As the Court pointed out in ***State v. Sinclair***, 192 Wn. App. 380, 612-613, 367 P.3d 612, *review denied*, 185 Wn.2d 1034 (2016), the award of appellate costs to a prevailing party is within the discretion of the appellate court. *See also* RAP 14.2; ***State v. Nolan***, 141 Wn.2d 620, 8 P.3d 300 (2000).

The legal principle that convicted offenders contribute toward the costs of the case, and even appointed counsel, goes back many years. In 1976, the Legislature enacted RCW 10.01.160, which permitted the trial courts to order the payment of various costs, including that of prosecuting the defendant and his incarceration. *Id.* In ***State v. Barklind***, 87 Wn.2d 814, 557 P.2d 314 (1977), the Supreme Court held that requiring a

defendant to contribute toward paying for appointed counsel under this statute did not violate, or even "chill" the right to counsel. *Id.*, at 818.

In 1995, the Legislature enacted RCW 10.73.160, which specifically authorized the appellate courts to order the (unsuccessful) defendant to pay appellate costs. In ***Blank***, supra, at 239, the Supreme Court held this statute constitutional, affirming this Court's holding in ***State v. Blank***, 80 Wn. App. 638, 641-642, 910 P.2d 545 (1996).

Nolan, 141 Wn.2d 620, noted that in ***State v. Keeney***, 112 Wn.2d 140, 769 P.2d 295 (1989), the Supreme Court found the imposition of statutory costs on appeal in favor of the State against a criminal defendant to be mandatory under RAP 14.2 and constitutional, but that "costs" did not include statutory attorney fees. ***Keeney***, at 142.

Here, the defendant appeared to be able-bodied and capable of working. She is only 42 years of age and a relatively short sentence of approximately three years on these charges. Any assertion that the defendant cannot and will never be able to pay appellate costs is belied by the record. Therefore, this court should properly exercise its discretion in determining whether to impose appellate costs.

D. CONCLUSION.

For the above stated reasons, this court should affirm the defendant's convictions below.

DATED: FEBRUARY 9, 2017.

MARK LINDQUIST
Pierce County
Prosecuting Attorney

MICHELLE HYER
Deputy Prosecuting Attorney
WSB # 32724

Lily Wilson
Appellate Intern

Certificate of Service:
The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

2/9/17
Date Signature

PIERCE COUNTY PROSECUTOR

February 09, 2017 - 3:14 PM

Transmittal Letter

Document Uploaded: 1-488400-Respondent's Brief.pdf

Case Name: State v. Jean Marie Manussier

Court of Appeals Case Number: 48840-0

Is this a Personal Restraint Petition? Yes ■ No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

■ Brief: __Respondent's__

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Heather M Johnson - Email: hjohns2@co.pierce.wa.us

A copy of this document has been emailed to the following addresses:

SCCAttorney@YAHOO.COM